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ents, Washington, D.C. 20231 on the date indicated below.

Jean McCue
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The following is in response to the Office Action dated September 18, 2002.

The Examiner has recognized that claims 1-22 are pending in this application. However, in her restriction requirement, claim 22 has not been included. It is assumed that the Examiner intended to include claim 22 with the claims 14-21 of invention designated III.

It is further noted that on page 4 of the Office Action the Examiner states that “Because these inventions are distinct... and have acquired a separate status in the art as shown by their different classification, and the literature and sequence searches required for each of the groups are not required for another of the groups, restriction for examination purposes as indicated is proper.” While it is admitted that separate classification is a factor to be considered, the Examiner has indicated that claims 7-13 (Invention II) drawn to a gene gazette is “classified in class 536, subclass 23.1” and that claims 14-21

(Invention III) to a gene cassette is classified in class 536, subclass 23.1. This shows that the subject matter has not attained recognition in the art as a separate subject for inventive effort and also that a separate field of search is not required. Reference to MPEP 808.02 indicates that if there is a separate status in the art albeit they are classified together, this may be shown by citing patents and if a different field of search exists for one or the other of the inventions, then the indicated different fields of search must be shown. As stated in MPEP § 808.02 "where, however, the classification is the same and the field of search is the same...no reasons exist for dividing among related inventions.

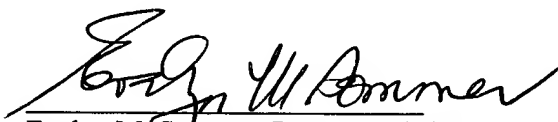
The gene cassettes as claimed in claim 7 and claim 14 differ in that in one case the gene cassette is for the reversible introduction of heterologous DNA sequence into a genome of a negatively propagated plant. Claim 1 which is directed to a method of making transgenic plants does not distinguish the type of plant and the nature of the gene cassette used therein.

The election requirement is not believed proper and is traversed for at least the above reasons. It is respectfully requested that the requirement be withdrawn.

In compliance with the requirement, applicants elect the invention designated I comprising claims 1-6 and drawn to the method. Applicants reserve their right to duly file one or more divisional applications for the non-elected inventions.

An action with respect to the traversed restriction requirement and other wise on the merits is respectfully requested.

Respectfully submitted,



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